

Antarctic Nongovernmental Activity Preparedness Act of 2014

(NSF-01-14)

§ 100. Congressional findings and declaration of purpose

(a) Findings

The Congress finds that—

(1) for over half a century, scientific investigation and environmental protection has been the principal activity of the Federal Government and United States citizens in Antarctica;

(2) the National Science Foundation funds and manages the United States Antarctic Program, the national program of scientific research in Antarctica, together with associated logistical support activities, infrastructure, as well as broad environmental stewardship responsibilities in Antarctica;

(3) land- and ship-borne tourism in Antarctica, including tourism that United States-based companies organize or originate, continues to increase at a significant rate;

(4) achievement of the United States Antarctic Program scientific objectives requires the full commitment of the operational and logistics capabilities of the Program;

(5) long-standing United States policy regarding private non-governmental expeditions to Antarctica has been not to offer support or other services to private expeditions in Antarctica, and, instead, to encourage complete operational and financial self-sufficiency on the part of non-governmental expeditions to Antarctica;

(6) in limited emergency situations the United States may attempt, at its discretion and in accordance with international law and humanitarian principles, the rescue of private individuals provided that no unacceptable risks are posed to United States personnel and the rescue can be accomplished by the United States within locally available means;

(7) increased tourism and other non-governmental activities could result in additional health and safety, search and rescue, medical care and evacuation costs. These costs could increase the financial burden on the United States Antarctic Program, increase the risks to the safety of those involved in search and rescue, and jeopardize scientific objectives through the diversion of resources; and

(8) in recognition of the growing potential for additional costs to be imposed on national Antarctic programs, the Antarctic Treaty Consultative Parties, including the United States, adopted Measure 4 (2004), “Insurance and Contingency Planning for Tourism and Non-Governmental Activities in the Antarctic Treaty Area.” Measure 4 (2004), after it takes effect, will require the Parties to impose operational and financial self-sufficiency

requirements on non-governmental persons organizing expeditions to Antarctica organized in or proceeding from their country.

(b) Purpose

The purpose of this chapter is to implement Measure 4 (2004), “Insurance and Contingency Planning for Tourism and Non-Governmental Activities in the Antarctic Treaty Area.”

§ 101. Definitions

For purposes of this chapter--

- (a) The term “Antarctica” means the area south of 60 degrees south latitude.
- (b) The term “Director” means the Director of the National Science Foundation.
- (c) The term “expedition” means an activity undertaken by one or more non-governmental persons organized within or proceeding from the United States to or within Antarctica for which advance notification is required under Paragraph 5 of Article VII of the Antarctic Treaty. The term “expedition” does not include fishing activities or the operation of fishing vessels.
- (d) The term “person” has the meaning given that term in section 1 of title 1, United States Code, and includes any person subject to the jurisdiction of the United States except that the term does not include any department, agency, or other instrumentality of the Federal Government.

§ 102. Obligation of Persons Organizing Expeditions to prepare Contingency Plans and Obtain Insurance

(a) Persons organizing expeditions shall:

- (1) prepare and establish appropriate contingency plans and sufficient arrangements for health and safety, search and rescue, medical care and evacuation of persons engaged in an expedition;
- (2) obtain adequate insurance or other financial arrangements to cover all costs associated with search and rescue and medical care and possible evacuation of any persons engaged in an expedition; and
- (3) establish or obtain the contingency plans, arrangements and insurance or other financial arrangements referred to in subsection (a) prior to the date on which an expedition commences.

(b) The contingency plans and other arrangements referred to in subsection (a) shall not rely on support from national Antarctic programs or other agencies of governments

conducting research or other activities in Antarctica without their express written agreement.

§ 103. Certification of Compliance

(a) Persons organizing expeditions shall submit to the Director a written certification that confirms its compliance with the requirements of section 102 of this Chapter, including a statement that all such plans, arrangements and insurance or other financial arrangements meet all applicable international and domestic legal and regulatory requirements as well as clearly established industry standards.

(b) Any certification filed pursuant to clause subsection (a) of this section shall contain an acknowledgment that any knowing and willful false statement made in such certification is punishable under section 1001, of Title 18, by fine or imprisonment of not more than 5 years, or both. The Director may refer potential violations of section 1001, of Title 18, to the Department of Justice for criminal prosecution, as appropriate.

§104. Costs and administrative fees

(a) If any person organizing an expedition receives any services covered by this Chapter from any department, agency, or instrumentality of the Federal government, or contractors working in support of such entities, absent an express written agreement for such services with the National Science Foundation, the Director may assess the costs, direct and indirect, of any such services incurred by the National Science Foundation, its contractors, or other department, agency or instrumentality of the Federal government, including all reasonable attorney's fees and costs associated with the collection of such sums. The Director may request the Attorney General to initiate a civil action for the recovery of such costs. The National Science Foundation is authorized to retain all monies collected pursuant to this subsection and shall distribute such monies to any department, agency or instrumentality of the Federal Government to the extent non-reimbursed costs were actually incurred by those entities. Such monies shall remain available for expenditure, without further appropriation, until expended.

(b) Beginning in fiscal year 2014 and thereafter, the Director may establish, modify, charge, and collect administrative fees for the administration of the requirements of this Chapter. The National Science Foundation is authorized to retain all monies collected pursuant to this section. Such monies shall remain available for expenditure, without further appropriation, until expended.

§ 105. Foreign expeditions

A person organizing an expedition shall not be required to comply with the provisions of this chapter if the Secretary of State determines at any time, in writing, that another Party to the Antarctic Treaty has jurisdiction over that expedition and is exercising its authority

with regard to that expedition. However, to the extent the National Science Foundation, its contractors, or other department, agency or instrumentality of the Federal government incurs direct or indirect costs relating to services covered by this Chapter for an expedition, those costs remain recoverable against persons subject to the jurisdiction of the United States pursuant to section 104.

§106. Civil penalties

(a) Assessment of penalties

Any person organizing an expedition that the Director determines, after notice and an opportunity for a hearing, to have failed to comply with the requirements of this Chapter, or its implementing regulations, shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$125,000 for each violation unless the prohibited act was knowingly committed, in which case the amount of the civil penalty shall not exceed \$250,000 for each violation. Each day an expedition remains in Antarctica without complying with the requirements of this Chapter shall constitute a separate offense for penalty purposes. The amount of any civil penalty shall be assessed by the Director by written notice. Any civil penalty assessed under this subsection may be remitted or mitigated by the Director.

(b) Hearings

Hearings for the assessment of civil penalties under subsection (a) shall be conducted in accordance with section 554 of Title 5. For the purposes of conducting any such hearing, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Director or to appear and produce documents before the Director, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) Review

Upon the failure of any person against whom a civil penalty is assessed under subsection (a) of this section to pay such penalty, the Director may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Director and shall sustain the decision of the Director if it is supported by substantial evidence on the record considered as a

whole.

(d) Penalties under other laws

The assessment of a civil penalty under subsection (a) of this section for any act shall not be deemed to preclude the assessment of a civil penalty for such act under any other law.

§107. Regulations

The Director may prescribe such regulations as may be appropriate to implement and enforce the provisions of this Chapter.

§ 108. Effective date

This chapter shall take effect 180 days after enactment.